

SD10, DOR likely to head back to court over TIFID

Department of Revenue seeks to lift stay on hearing

James S. Rosien
Leader Reporter

The ongoing legal dispute over how Anaconda Public School District 10 is using its revenue from the Mill Creek Tax Increment Finance Industrial District (TIFID), including a proposed \$4.9 million renovation of Mitchell

Stadium, looks like it will end up back in court after all.

The Montana Department of Revenue (DOR) filed papers with 3rd District Court earlier this week to ask 4th District Judge Ed McLean to lift a stay on any further court proceedings in the matter. The DOR, SD10 and Anaconda-Deer Lodge County were scheduled to appear in court in Anaconda on Oct. 9, 2012, but the hearing was canceled after the parties agreed to negotiate out of court.

The DOR's court filing also

states it expects to seek a motion to preclude SD10 from spending the TIFID funds during any forthcoming litigation.

"The door is still open to negotiation," said DOR Spokesperson Mary Ann Dunwell in an e-mail interview Friday morning. "The reason we filed yesterday...to remove the stay on the hearing is because it did not appear the talks were fruitful. We face a March deadline and need to move toward resolution."

That deadline is in reference to the SD10 Board of Trustees'

resolution in December to hold its TIFID disbursements in abeyance until March 1, 2013 as a move to restore negotiations with the DOR. That came a month after trustees had voted in November to amend its 2012-13 budget to include the TIFID monies, which amounted to approximately \$1.2 million last

year, into its elementary and high school district flexibility funds, which SD10 has been using on infrastructure projects around the district. At the same time that SD10 was voting to restore those funds to its budget, *The Leader* reported that talks between the two parties had stalled.

Court documents filed by the DOR obtained by *The Anaconda Leader* state that "Given this impending deadline evincing SD10's apparent intent to access and expend the funds, the Department believes that the current dispute can only be

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resolved by a ruling from the Court on the ultimate legal issues after the parties have had time to conduct discovery.”

An attached affidavit from Alan Peura, deputy director of the DOR, stated that “the parties believed that an out-of-court settlement could be reached. Since then, there have been a number of attempts to reach a settlement between the Anaconda School District No. 10 and the Department. Given recent communication with SDIO and SDIO’s apparent intent to access and expend the TIFD funds at issue in March 2013, it has become apparent to me that (an) agreement cannot be reached between the Department and SDIO. It is my belief that the parties have reached an impasse.”

Dr. Tom Darnell, SDIO superintendent, took exception to those statements, saying that the DOR has not made any attempts to negotiate.

“All attempts to negotiate have been by the school district, and all attempts to that end have failed,” Darnell said in an interview Thursday. “We held the TIFID funds in abeyance in good faith. (Peura) is contending that the school district will start using that money on March 1; that may or may not happen, but that wasn’t the purpose of the deadline. The purpose was to give time to negotiate and none of those attempts have come to fruition. We’ll clarify that for the judge, that all attempts to negotiate have been by the school district.”

Whether the Board of Trustees will move to spend the

TIFID funds after March 1 “is presumptuous on their part,” Darnell added, and any impasse in negotiations is because “they’ve failed to bargain in what I’d call good faith.”

The Leader reported last month that SDIO presented a possible solution to the DOR in the form of an interim study by the Montana State Legislature during the current session, with any changes to the law coming in its 2015 session.

Asked if the DOR was not in favor of SDIO’s offer to take the matter to a legislative study, and if the DOR has made any settlement offers of its own, Dunwell stated that “Our response is we think the law is quite clear.”

Darnell was equally confident of SDIO’s position, saying the school district’s receipt and use of the TIFID funds “is legal and within Montana statutory requirements unless proven otherwise.”

“The bottom line is, there is not even any discussion between the school district and the Department of Revenue because they’re not even willing to discuss it,” he said.

The SDIO Board of Trustees will discuss the matter at their next regular meeting, scheduled for Wednesday, Feb. 13 at 7 p.m. in the boardroom of the Administration Wing at 1410 W. Park Ave.